

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL W. EMERICK,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:06-CV-1461 TIA
)	
JIM MOORE,)	
)	
Respondent.)	

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Michael W. Emerick for leave to commence this action without payment of the required filing fee. Upon consideration of the financial information provided with the application, the Court will grant applicant provisional leave to file this action pursuant to 28 U.S.C. § 1915(a).

The Petition

Petitioner, a Missouri state prisoner incarcerated at the Northeast Correctional Center ("NECC"), seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 for a conviction which arose in Greene County, Missouri. The NECC is located in Pike County, Missouri, which is in the Eastern District of Missouri. 28 U.S.C. § 105(a)(2). Greene County is located in the Western District of Missouri. 28 U.S.C. § 105(b)(5).

Discussion

Pursuant to 28 U.S.C. § 2241(d), the Eastern District of Missouri and the Western District of Missouri have concurrent jurisdiction to entertain the petition. Where two district courts have concurrent jurisdiction over a petition for a writ of habeas corpus, the district in which the petition is originally filed may, in the exercise of its discretion and in furtherance of justice, transfer the

petition to the other district court for hearing and determination. 28 U.S.C. § 2241(d). Furthermore, on January 27, 1986, this Court entered an order stating that, absent unusual circumstances, any habeas corpus petition challenging a conviction or sentence arising out of a proceeding in the Western District of Missouri shall be transferred to that district pursuant to 28 U.S.C. § 2241(d). See In re: Business of the Court, January 27, 1986.

Because the conviction arose in the Western District of Missouri, the Court believes that the interest of justice would be better served if the petition were transferred to the United States District Court for the Western District of Missouri.

Therefore,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #2] is **PROVISIONALLY GRANTED**. Because this case is to be transferred to the United States District Court for the Western District of Missouri, such leave to proceed in forma pauperis is subject to modification by the Western District upon transfer.

An appropriate order shall accompany this memorandum and order.

Dated this 19th day of October, 2006

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE